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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matters of)

Application of)

CAPITOL RADIOTELEPHONE, INC.)
d/b/a CAPITOL PAGING)

PR Docket No. 93-231

For a Private Carrier Paging)
Facility on 152.480 MHz in)
Huntington/Charleston, WV)

Imposition of Forfeiture re)

CAPITOL RADIOTELEPHONE, INC.)
d/b/a CAPITOL PAGING)

Former Licensee of Station)
WNSX646 in the PLMRS)

Revocation of Licenses of)

CAPITOL RADIO TELEPHONE, INC.)
d/b/a CAPITOL PAGING)

Licensee of Stations WNDA400)
and WNWW636 in the PLMRS)

Revocation of Licenses of)

CAPITOL RADIOTELEPHONE COMPA-)
NY, INC. d/b/a CAPITOL PAGING)

Licensee of Stations KWU373,)
KUS223, KQD614 and KWU204 in)
the PMRS)

To: Administrative Law Judge Joseph Chachkin

MOTION TO DELETE FOOTNOTE

CAPITOL RADIOTELEPHONE COMPANY, INC. (a/k/a Capitol
Radiotelephone, Inc. or Capitol Radio Telephone, Inc.) d/b/a
CAPITOL PAGING ("Capitol"), by its attorneys, hereby moves
the Presiding Judge for an order deleting Footnote No. 2
from Memorandum Opinion and Order ("MO&O"), FCC 93M-750

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issued December 13, 1993 and released December 14, 1993. In support thereof, Capitol respectfully shows:

Footnote No. 2 (p. 3) of the MO&O is dictum concerning the status of Capitol's response to RAM Technologies' Request for Admissions to Capitol Radiotelephone Company, Inc. Evidently relying on an erroneous representation by the Private Radio Bureau that "[r]esponses to those [RAM request for] admissions are overdue, and thus, the facts therein are already admitted,"¹ the Presiding Judge included a similar statement in Footnote No. 2 of the MO&O in the course of ruling upon RAM's separate request for withdrawal from the proceeding.

The statement in Footnote No. 2 is dictum because the pertinent issue was never joined in the proceedings on RAM's motion for withdrawal, nor was it necessary to the Presiding Judge's actual decision in the MO&O. Moreover, in issuing the MO&O, the Presiding Judge did not have before him Capitol's timely-filed Opposition to Motion to Compel.² It was

¹ Private Radio Bureau's Consolidated Opposition to RAM's Motion for Withdrawal and Notice of Withdrawal of Discovery Requests, December 8, 1993, at ¶5 & p. 4. (Emphasis added).

² See MO&O at ¶1 (reciting that the only pleading the Presiding Judge had "[u]nder consideration" in issuing the MO&O were the "'Motion For Withdrawal' filed December 6, 1993 by RAM Technologies, Inc. (RAM), Notice of Withdrawal Of Discovery Requests filed December 6, 1993 by RAM, and Private Radio Bureau's Consolidated Opposition to RAM's Motion For Withdrawal And Notice Of Withdrawal Of Discovery Requests filed December 8, 1993." Capitol's Opposition to Motion to Compel was timely filed on December 10, 1993.

in Capitol's Opposition to Motion to Compel, and not in the Bureau's opposition to RAM's request to withdraw, that the issue of Capitol's response to RAM's request for admissions was joined.³

In its Opposition to Motion to Compel filed December 10, 1993, Capitol fully demonstrated the error of the Bureau's claim that Capitol's response to RAM's request for admissions was overdue. In fact, as demonstrated by the agreement of November 30, 1993 between RAM and Capitol, RAM had, by stipulation, indefinitely suspended the deadline for Capitol's response to RAM's request for admissions. See Settlement Agreement at ¶1 & p. 1, annexed to Capitol's Opposition to Motion to Compel. Thus, contrary to the Bureau's representation to the Presiding Judge, upon which the Presiding Judge evidently relied in making the statements in Footnote No. 2 of the MO&O, Capitol's response is not overdue. There is, therefore, no basis upon which to infer that the matters set forth in RAM's request for admissions properly can be deemed to have been admitted by Capitol.

³ The significance of the fact that the pertinent issue was never joined in the papers leading to the MO&O is underscored by the fact that the Presiding Judge subsequently dismissed the Private Radio Bureau's Motion to Compel as moot. Order, PR Docket No. 93-231, FCC 93M-761, issued December 20, 1993 and released December 21, 1993. There is thus no proceeding pending in which a proper ruling can be made as to the status of Capitol's response to RAM's request for admissions, in contrast to the dictum in Footnote No. 2 of the MO&O.

Nor is there any question that proceeding by stipulation between RAM and Capitol was an entirely proper means of dealing with RAM's request for admissions. As an initial matter, Capitol points out that requests for admissions are strictly voluntary, bilateral instruments; they are in contrast to interrogatories, which have some third party enforcement rights associated with them.⁴ Therefore, only RAM and Capitol needed to be parties to any stipulations concerning RAM's request for admissions. Moreover, the Presiding Judge expressly authorized the parties in this case to proceed by stipulated schedules in lieu of the timetables specified in the rules -- including stipulated schedules for requests for admissions.⁵

⁴ See §1.323(c) of the rules (authorizing "[a]ny party to the proceeding" to move to compel an answer to an interrogatory).

⁵ The authorization was given on the record at the Prehearing Conference on October 29, 1993.

"JUDGE CHACHKIN: * * * What, what does this mean in terms of responding to interrogatories, production of documents, admissions?

"MR. HARDMAN: Well, it --

"JUDGE CHACHKIN: Are we using the time specified in the Rules or are we -- the Parties have come up with some kind of stipulation on that?

* * * * *

"JUDGE CHACHKIN: All right. Well, I'll leave it for the Parties to work out some stipulated procedures with the understanding that discovery is to be completed by January 4th. * * * "

It is also pertinent in this regard that RAM's requests for admissions substantially duplicate the requests for admissions sought by the Private Radio Bureau,⁶ which Capitol timely responded to on December 1, 1993.⁷ For example, RAM's Request Nos. 1 and 2 are essentially covered by PRB Admission Request Nos. 1 through 31; RAM's Request No. 3 duplicates PRB Admission Request No. 33; RAM's Request No. 4 is essentially covered by PRB Admission Request Nos. 40 through 54, particularly Nos. 43, 48 and 53; RAM's Request No. 5 duplicates PRB Admission Request Nos. 57, 63, 69 and 75; RAM's Request No. 6 duplicates PRB Admission Request No. 93; RAM's Request No. 7 is essentially covered by PRB Admission Request Nos. 60, 66, 72 and 78; RAM's Request Nos. 9 through 11 duplicate PRB Admission Request No. 89; and RAM's Request No. 12 duplicates PRB Admission Request No. 87.

Similarly, RAM's Request No. 8 duplicates information elicited by Interrogatory No. 12 of Private Radio Bureau's First Set of Interrogatories; and RAM's Request Nos. 16, 19, 20 and 21 duplicates information elicited by Private Radio Bureau's Request For Production of Documents Nos. 1, 3, 4 and 5. Again, Capitol timely responded both to the Private

(Transcript of Prehearing Conference, October 29, 1993, pp. 22-23).

⁶ Request For Admission of Facts, Private Radio Bureau, October 12, 1993 (the "PRB Admission Request").

⁷ Capitol's Response to the Private Radio Bureau's Request For Admission of Facts, December 1, 1993.

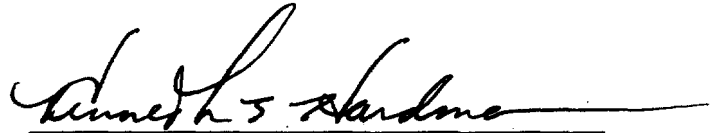
Radio Bureau's First Set of Interrogatories and its Request for Production of Documents.

Under these circumstances Capitol respectfully submits that it would be unwarranted in fact or law, and egregiously unfair to Capitol, to draw any evidentiary inferences of any kind from RAM Technologies' Request For Admissions to Capitol Radiotelephone Company, Inc. Accordingly, Footnote No. 2 to the Memorandum Opinion and Order, FCC 93M-750, issued December 13, 1993 and released December 14, 1993 should be deleted in its entirety.

Respectfully submitted,

CAPITOL RADIOTELEPHONE COMPANY,
INC. d/b/a CAPITOL PAGING

By:


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One of Its Attorneys

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December 30, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of December, 1993, served the foregoing Motion to Delete Footnote upon the Federal Communications Commission by delivering a true copy thereof to Administrative Law Judge Joseph Chachkin, 2000 L Street, N.W., Room 226, Washington, D.C. 20554, to Carol Fox Foelak, Esquire, Private Radio Bureau, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554, and to Y. Paulette Laden, Esquire, Mass Media Bureau, 2025 M Street, N.W., Room 7212, Washington, D.C. 20554, and upon RAM Technologies, Inc. by mailing a true copy thereof to its attorney, Frederick M. Joyce, Esquire, Joyce & Jacobs, 2300 M Street, N.W., Suite 130, Washington, D.C. 20037.


Kenneth E. Hardman